

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

MICHAEL KING, and individual  
doing business as KING ENTERPRISES,  
  
Plaintiff,  
  
v.  
  
BEACHBODY, LLC, a Delaware  
limited liability company  
  
Defendants.

No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**JURY DEMAND**

(An action related to Trademarks and  
Copyrights)

COMES NOW Plaintiff, MICHAEL KING dba KING ENTERPRISES (“King”), by and  
through undersigned counsel, and by this Complaint seeks declaratory judgment against Defendant  
BEACHBODY, LLC (“Beachbody”), and alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action for a declaratory judgment that King does not infringe any  
trademark and/or copyright asserted by Beachbody, including the trademarks for BEACHBODY,  
U.S. Reg. Nos. 2862904, 3450708, 2873866, and 266151, and FOCUS T25, U.S. Reg. Nos.  
4404411 and 4412310, and the copyrights in the FOCUS T25 product, Copyright Registration No.  
PA 0001862235 (collectively hereinafter, the “Asserted IP”).

2. This action arises under the trademark and copyright laws of the United States,

Titles 15 and 37 of the United States Code, and under the Federal Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202).

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (action arising under an Act of Congress relating to copyrights, trademarks, and unfair competition).

4. Plaintiff is informed and believes and on that basis alleges that this Court has personal jurisdiction over Beachbody because it has constitutionally sufficient contacts with Washington so as to make personal jurisdiction proper in this Court. Plaintiff is informed and believes and on that basis alleges that Beachbody maintains ongoing contractual relationships within this district and conducts or solicits business within this district.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400.

### **PARTIES**

6. Plaintiff, MICHAEL KING, is an individual living in Vancouver, Washington and doing business as KING ENTERPRISES. Plaintiff buys and sells goods on Ebay and other online auction platforms.

7. Plaintiff is informed and believes and on that basis alleges that Defendant, Beachbody LLC is a Delaware limited liability company with principal place of business in California and who conducts business and sales goods Nationwide and Worldwide.

### **THE PRESENCE OF AN ACTUAL CONTROVERSY**

8. Plaintiff buys and sells goods on Ebay and other online auction houses.

9. On or about March 3, 2018 Plaintiff purchased what he believed and continues to believe were Beachbody products from an individual holding himself out as an authorized agent of Beachbody.

10. Plaintiff posted these items for sale on Ebay. The first sale took place on March 14, 2018. Hereinafter the posting and sale of these goods shall be identified as the “Beachbody Ebay Sale.”

11. By March 27, 2018, Plaintiff had sold all of the Beachbody products, grossing less than \$5,500.00 in the Beachbody Ebay Sale.

12. On April 9, 2018, Plaintiff received a cease and desist letter from counsel for Beachbody stating that a private investigator on March 15, 2018 purchased one or more of the goods sole by Plaintiff in the Beachbody Ebay Sale described above, and that it was counterfeit, and therefore that Plaintiff was liable for trademark infringement, copyright infringement, false designation, trademark dilution, and unfair business practices, and attached a “draft complaint”. The letter specifically referenced that Asserted IP.

13. By Beachbody’s actions, King is in reasonable apprehension of an imminent suit related to the Asserted IP for trademark infringement, copyright infringement, false designation of origin, trademark dilution, and unfair business practices.

14. King denies that it infringed the Asserted IP, has falsely designated origin, has diluted any Asserted IP, and has engaged in unfair business practices. King now seeks a declaratory judgment that it does not infringe the Asserted IP, has not falsely designated origin, has not diluted any Asserted IP, and has not engaged in unfair business practices.

### **COUNT ONE--DECLARATORY JUDGMENT**

15. Plaintiff re-alleges every paragraph in this Complaint.

16. Plaintiff is informed and believes and on that basis alleges that Plaintiff has not infringed the Asserted IP, has not falsely designated the origin of goods, has not diluted the Asserted IP, and has not engaged in unfair business practices.

17. Plaintiff is informed and believes an actual controversy exists between King and Beachbody to whether or not King infringed the Asserted IP, has falsely designated origin, has diluted any Asserted IP, and has engaged in unfair business practices.

18. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 *et seq.*, King is entitled to a declaration, in the form of a judgment, that by its activities King has not infringed any Asserted IP, has not falsely designated origin, has not diluted any Asserted IP, and has not engaged in unfair business practices. Such a determination and declaration is necessary and appropriate at this time.

19. King further seeks declaratory relief in the alternative that in the event the Beachbody Ebay Sale goods did infringe one or more properties in the Asserted IP, falsely designated origin, diluted any Asserted IP, and/or constituted unfair business practices, that such acts were not willful and were innocent in that King believed it purchased Beachbody's own goods from an authorized agent of Beachbody.

#### PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment in its favor as follows:

- A. For judgment in favor of Plaintiff against Defendant on all claims;
- B. Declaring that Plaintiff did not infringe the Asserted IP, falsely designated origin, dilute any Asserted IP, or engaged in unfair business practices;
- C. Alternatively, Declaring Plaintiff's acts were innocent and not willful; and
- D. Awarding Plaintiff such other and further relief as is just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury in this action on all claims so triable.

DATED THIS April 17, 2018

Respectfully submitted,

/s/ Kurt M. Rylander

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